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IN THE SUPREME COURT OF THE STATE OF UTAH

FILED

OCT 1 1934

R. S. McKNIGHT,

— vs. —

STATE LAND BOARD,

ERVING WOLF,

Plaintiff, Clerk, Supreme Court, Utah

Defendant,

Intervenor,

Case
No. 9728

INTERVENOR'S BRIEF

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STATE LAND BOARD,

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INTERVENOR'S BRIEF

STATEMENT OF FACTS

The Intervenor, Erving Wolf, accepts the Statement of Facts contained in Plaintiff's brief as adequately stating the essential facts for purposes of this proceeding. However, the question actually presented is more correctly stated hereinafter.

QUESTION PRESENTED

Can the Utah State Land Board lawfully award oil and gas leases to the highest bidder who has corrected his applications pursuant to a general regulation so permitting?

ADDITIONAL UTAH STATUTES INVOLVED

Intervenor will not repeat the excerpts from the Utah Statutes which are set forth in the plaintiff's brief. However, certain other statutory provisions which are of vital concern are set forth hereinafter:

“65-1-45. Lease when several applications received — Procedure for leasing newly acquired lands and lands where previous lease terminated. — Except as otherwise provided by law, applications to lease shall be considered in the order filed; provided, that when simultaneous applications are filed the land board *shall let the land to the applicant who will pay the highest rental therefor*; and provided further, that applications to lease land already under lease shall not be received before the day following the expiration of said lease, and all such applications received on such day shall be considered simultaneous.” (Emphasis supplied)

“65-1-97. Authority of state land board to make rules. — The state land board may make and enforce rules and regulations not inconsistent with the provisions of this act for carrying the same into effect.”

ARGUMENT

POINT I.

THE UTAH STATE LAND BOARD LAWFULLY AWARDED THE OIL AND GAS LEASES TO INTERVENOR AS THE HIGHEST BIDDER.

Initially it should be first noted that there is no question as to who was the “first” applicant for the lease or

as to who would pay the highest rental, or as to actual qualifications, apart from stated qualifications. The inquiry is reduced to the legal question whether or not this intervenor was an "applicant" within the meaning of the statutory requirement that the Land Board is obligated, where more than one application was filed during the day in question, to "let the land to the applicant who will pay the highest rental therefor." The legislative intent as is shown by Section 65-1-87, provides that "oil and gas leases shall be issued only to applicants therefor who at the time of filing application and at the time of acceptance of application for lease by the State are either citizens of the United States, or associations of such citizens, or corporations . . ." No legislative purpose is disclosed or can fairly be inferred to make the lease award a matter of a game or contest to the most skillful or the most accurate in filing applications to the detriment of an applicant who offers to pay the highest rental and who is actually qualified in fact. The statutory objectives may be summarized by stating that the lease is to be awarded to the qualified citizen who files during the prescribed period and who offers to pay the highest rental.

To facilitate the performance of its duties of administration, the Utah State Land Board promulgated effective January 10, 1962, "Rules and Regulations Governing the Issuance of Mineral Leases," as amended. Rule 6 thereof provides in material part: "If an application is determined to be deficient, it shall be returned to the applicant with instructions for its amendment or completion. If the application is resubmitted in satis-

factory form within the time specified in the instructions, it shall retain its original filing time. If the application is resubmitted at any later time, it shall be deemed filed at the time of resubmission.”

Concepts of fairness and of efficient administration require that the Board be given the discretion to be able to establish rules and regulations general in scope and applying equally to all applicants whereby it adequately can determine who is qualified and who offers the highest rental. As was well said in the case of *Safariik v. Udall*, June 7, 1962, App. D.C. 304. Fed. 2d 944 at page 950:

“It is obvious that the Secretary of the Interior, in carrying out his functions in the administration and management of the public land, must be accorded a wide area of discretion and it is a well recognized rule that administrative action taken by him will not be disturbed by a court unless it is clearly wrong.” (Citing *McKenna v. Seaton*, App. D.C., 259 Fed. 2d 780, 784, c.d. 358 U.S. 835.)

A review of some of the authorities relating to the right to correct in closely similar situations will be helpful at this point. In *Huber v. Deep Creek Irrigation Company*, 1956, 6 Utah 2d 15, 305 Pac. 2d 478, this court held that the late paying of a filing fee and the failure to swear to the final proof did not invalidate the final proof in a water appropriation case, and held that the necessary or desired corrections could be made without loss of priority. This Intervenor’s applications and the subsequent corrections thereof are similar to the action taken in the *Huber*

case. There was a bona fide and substantial compliance in the original applications and prepayment was made as prescribed. Formal swearing to the citizenship upon the revised application form was accomplished within the time fixed by the order allowing the same.

This court in *Platt v. Locke*, 1961, 11 Utah 2d 273, 358 Pac. 2d 95, had for a consideration a question similar to the oil and gas lease applications in many respects. There a contractor entered into a specialty contract with no knowledge or notice that a license therefor was required under the circumstances. The contractor acted diligently in obtaining a specialty license after receiving notice that such was a requirement. It was held that the plaintiff was entitled to recover under his contract. Here the oil and gas lease application forms as promulgated by the State Land Board were not numbered as to form number or date of printing. This Intervenor, in good faith and without any notice or knowledge or lack of diligence, applied on an obsolete form previously promulgated by the State Land Board. A corrected application on the new form, sworn to under oath, and containing all of the required information was promptly and diligently filed within the time allowed by the Board.

There is no essential or inherent conflict between Rule 6 of the State Land Board and the legislative intent of awarding a lease to the applicant who will pay the highest rental therefor during that day who is in fact qualified. As was well stated in 42 Am. Jur., Public Administrative Law, Section 101 at page 431: "Rules made in the exercise of a power delegated by statute

should be construed together with the Statute to make, if possible, an effectual piece of legislation in harmony with common sense and sound reasoning . . .”

Such phrases as “accompanied with” and “together with” have been construed in practice and procedure cases to give a sound and just result. Thus in *Los Angeles County v. Lewis*, 1918, 177 Pac. 154, the California Supreme Court held that a motion to which a copy of the answer was not attached was “accompanied with a copy of the answer,” where the answer had theretofore been offered to the Clerk of the Court for filing.

But perhaps more closely in point than any of the cases cited is the recently cited case of *McKenna v. Seaton*, supra. There, after a full examination, the court concluded that a public official charged with the administration of the public lands could validly make general regulations equally applicable to all, allowing reasonable opportunity to correct without loss of priority. This was in accord with sound reason and justice and not contrary to a statute giving an oil and gas lease to the first qualified applicant to file. The same reasoning applies to the power and jurisdiction of the Utah State Land Board and to their regulation issued thereunder. It is interesting to note that virtually all of the cases cited by the plaintiff in his brief, upon analysis, actually stand for the proposition that a public official charged with the duty of the administration of the public lands can take administrative action and make general regulations within a wide area of discretion. The appellate court with the most experience in this type of case is, of

course, the United States Court of Appeals for the District of Columbia. That latest pronouncement of that court upon the subject has already been quoted in the *Safarik* case. The plaintiff relies upon earlier opinions of the same court including *McKenna v. Seaton*, supra. But in the *McKenna* case, the power of the Secretary to allow a correction to any oil and gas lease application by a party actually qualified to hold the lease was fully sustained, the court's opinion saying:

“To decide that the defect was curable within a specified time without loss of priority appears to us to be entirely fair, reasonable, and rational administrative action, not inconsistent with any statutory provision or any principle of law or equity.” 259 Fed. 2d 780, 780 at page 783.

Plaintiff asserts that the omissions in the *McKenna* case were insignificant while the omissions in the applications here under consideration were significant. But an examination of the facts will not bear out the asserted claim of difference, aside from the fact that it would appear to be an administrative function to determine what items were correctable on the application forms. In each instance, it was a matter of supplying additional information to the administrative body to assure that the applicant was in fact truly qualified. In the federal case, the omission was a matter of identification of the acreage held and in this proceeding the omission was a matter of formal swearing to citizenship and to an express statement of a willingness to accept the provisions of the lease.

Plaintiff also cites *McKay v. Wahlenmaier*, 226 Fed. 2d 35, (1955). That case in essence holds that the public

official can and should reject applications which have elements of fraud despite the statutory requirement that the applicant who first applies and who is qualified is entitled to the lease. Intervenor has no quarrel with the that proposition or with the other cases cited by plaintiff which boil down to the general proposition that an administrative agency can make and enforce reasonable rules for the filing of applications and the payment of fees.

CONCLUSION

There is no reason in statute, in reason, or in justice why this Intervenor, as the applicant who filed in good faith and diligently pursued his application, should not be awarded the lease as the party who would pay the highest rental therefor. The writ heretofore issued should be dismissed.

Respectfully submitted,

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